Filed 4/13/15 P. v. Gonzalez CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JAVIER MALDONADO GONZALEZ, Defendant and Appellant.	B254532 (Los Angeles County Super. Ct. No. A952221)

APPEAL from a judgment of the Superior Court of Los Angeles County, C. H. Rehm, Judge. Affirmed.

Law Offices of Anthony J. Pullara and Anthony J. Pullara, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Javier Maldonado Gonzalez, appeals the denial of his post-judgment motion to vacate the judgment and withdraw his guilty plea. In 1987, Gonzalez pled guilty to the sale or transportation of heroin (Health & Saf. Code, § 11352).

The judgment is affirmed.

BACKGROUND

Because Gonzalez's conviction was the result of a plea bargain agreement entered into prior to any preliminary hearing, the record does not reflect the facts on which his guilty plea was based.

On May 28, 1987, a felony complaint was filed charging Gonzalez with one count of possessing heroin for sale, and two counts of selling or transporting heroin (Health & Saf. Code, §§ 11351, 11352).[1] On August 18, 1987, Gonzalez pled guilty to one count of selling or transporting heroin in consideration for dismissal of the other two counts and the following sentence: three years' probation after serving 180 days in county jail, in addition to the payment of $150 in fines and fees.

On May 9, 1988, Gonzalez failed to make a court appearance. His probation was revoked and a bench warrant issued. Twelve years later, on July 11, 2000, Gonzalez made a court appearance based on this warrant,[2] at which time he admitted a probation violation. The trial court then reinstated his probation.

On November 8, 2013, Gonzalez filed a motion in the trial court under Penal Code section 1016.5, seeking to vacate his guilty plea on the ground he had not been properly advised of possible immigration consequences. The trial court denied the motion and this appeal ensued.

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[1] The offenses had allegedly been committed on two occasions: a sale or transportation count on May 6, 1987, and then a possession for sale count and a sale or transportation count on May 8, 1987.

[2] It is unclear whether Gonzalez was picked up by the police or voluntarily surrendered on the bench warrant.

CONTENTION

Gonzalez contends that his Penal Code section 1016.5[3] motion should have been granted because he demonstrated prejudice resulting from the lack of an immigration-consequences advisement.

DISCUSSION

1. *Legal principles.*

"Penal Code section 1016.5 requires that, before accepting a plea of guilty or nolo contendere to any criminal offense, the trial court must advise the defendant that if he or she is not a United States citizen, conviction of the offense may result in deportation, exclusion from admission to the United States, or denial of naturalization. The statute allows the defendant to move to vacate the judgment if the trial court fails to give the required advisements. In *People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 203-204 . . . , we recognized that a motion to vacate a judgment under section 1016.5 may be brought in the trial court after judgment has been imposed." (*People v. Totari* (2002) 28 Cal.4th 876, 879.)

"In *Zamudio*, we recognized that a noncitizen defendant has a 'substantial right' to be given complete advisements under section 1016.5." (*People v. Totari, supra*, 28 Cal.4th at p. 883.) "To prevail on a motion to vacate under section 1016.5, a defendant must establish that (1) he or she was not properly advised of the immigration consequences as provided by the statute; (2) there exists, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified

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[3] Subdivision (a) of section 1016.5 provides: "Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States."

All further references are to the Penal Code unless otherwise specified.

adverse immigration consequences; and (3) he or she was prejudiced by the nonadvisement. [Citations.]" (*Id*. at p. 884.)

"An order denying a section 1016.5 motion will withstand appellate review unless the record shows a clear abuse of discretion. [Citation.] An exercise of a court's discretion in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice constitutes an abuse of discretion. [Citation.]" (*People v. Limon* (2009) 179 Cal.App.4th 1514, 1517-1518; accord *People v. Superior Court (Zamudio), supra,* 23 Cal.4th at p. 192.)

2. *Gonzalez's section 1016.5 motion.*

As to the first prong of a section 1016.5 showing – the failure to advise a defendant of the potential immigration consequences of a conviction – given the age of Gonzalez's conviction and the consequent lack of any contemporary written record, the statutory presumption of nonadvisement was applicable. Subdivision (b) of section 1016.5 provides: "Absent a record that the court provided the advisement required by this section, the defendant shall be presumed not to have received the required advisement." The Attorney General implicitly concedes the trial court properly ruled this presumption of nonadvisement was applicable here because it had not been rebutted.[4]

As to the second prong of a section 1016.5 showing – the possibility that a conviction will actually result in immigration consequences – Gonzalez's personal declaration states: "I am currently in proceedings before the United States Immigration Court where the government is requesting my deportation." The Attorney General concedes the trial court properly found this showing was sufficient.

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[4] The trial court ruled: "The court file is over 26 years old. The Court Reporter's notes of the August 18, 1987, plea have been disposed of. (Gov't. Code §69955 [court reporter notes may be destroyed after 10 years].) Nothing on this record discloses what immigration advisement was provided to Defendant. Consequently, it must be presumed that the Defendant was not properly advised. This is a rebuttable presumption. (*People v. Dubon* (2001) 90 Cal.App.4th 944, 952.) Nothing on this record rebuts the presumption that Defendant did not receive the required immigration advisement."

As to the third prong of a section 1016.5 showing – demonstrating the defendant has been prejudiced by the nonadvisement – Gonzalez states in his declaration that he was born in Mexico, came to the United States in approximately 1981, and is now a legal permanent resident. He asserts it was only in 2013 that he learned his 1987 guilty plea had immigration consequences: "I have traveled outside the United States approximately 20 times and was always readmitted without incident, my belief was that there were no immigration consequences to this conviction since I never had a problem reentering. However, in April 2013 when returning . . . from Costa Rica, I was taken into immigration custody. This was the first time I was informed that this conviction subjects me to mandatory deportation and that it will cause me to lose my legal permanent residency."

Gonzalez states in his declaration that he has been married for 25 years, his wife has been employed by Forest Lawn Memorial Park for 28 years, and he has been working as a truck driver for Rockview Farms for 14 years. He and his wife have owned their own home for 22 years. They have a 24-year-old daughter who attends East Los Angeles College and is employed as a manager at NYX Cosmetics, Inc. Their other daughter is 19 years old and attends Concorde Career College. Gonzalez's wife and daughters are United States citizens.

Gonzalez further states: "If I had been informed of the significant immigration consequences of this conviction prior to pleading guilty, I would have explored every option available to negotiate an immigration neutral plea agreement. I am unaware of any attempt to make this matter immigration neutral. [¶] If I had known of these immigration consequences I would not have accepted the plea agreement and would have continued to fight the case, seeking an immigration neutral resolution. [¶] More importantly, I fear that I will be separated from my wife and children. I have a very close relationship with my family and do not want to lose them if I am deported and barred from re-entering the United States."

At the trial court hearing on Gonzalez's motion, defense counsel addressed the issue of prejudice:

"[Defense counsel]: . . . [I]t is important to note that this was a certified plea that was prior to the preliminary hearing. And I think it is reasonable to assume that [Gonzalez] would have, if knowing the devastating immigration impact in this case, would have not [pled] early in the case and would have continued to litigate the case in search of something that was immigration neutral.

"The Court: That is what I am asking. What evidence is there that he would have benefited by continuing to litigate this case? It appears that he was facing roughly the potential of seven years and four months in state prison, the imposition of $2,000 in fines and fees. He was able to negotiate a probationary term of 180 days in county jail and $200.

"[The prosecutor]: Your Honor, I don't think the defendant can show any prejudice at all. He took advantage of a plea bargain that benefited him in every way, most especially got him out of jail. . . .[5]

"The Court: . . .What evidence, if there is any, did Mr. Gonzalez have that might have exonerated him had he gone to trial?

"[Defense counsel]: "I . . . think he needs to show by a preponderance of the evidence that he would not have [pled] guilty at that point in time and he submitted a declaration to that fact. There is no record as to whether or not this was a very strong case or if this was a very weak case. The offer of probation and 180 days . . . yes, the maximum exposure by [*sic*] seven years. But if you are thinking about somebody with their very first offense on a case like this, that is not an extraordinary offer that would be so incredible that it would preclude somebody to continue to litigate the case and try to negotiate an immigration neutral disposition. I think the fact that he had already established his entire life in the United States at that point in time is corroborative of the fact he would not quickly accept a plea agreement that would cause him to be deported. . . .

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5 The prosecutor was speaking metaphorically; Gonzalez was sentenced to 180 days in County Jail, but no prison time.

"And if properly advised of the immigration consequence, he would have continued to litigate the case and, you know, cases like this are often resolved in an immigration neutral manner when people are aware of the consequence and put their heads together and think of creative ways to satisfy what the People need and to also make it immigration neutral.

"[¶] . . . [¶]

"And I think in his case, since it was his first offense, and it was not an extraordinary offer, it was not as if he received a . . . no time or credit for time served offer. I think it is reasonable to assume that if he had known the significant impact this would have on his life, he would have continued to litigate the case to try to get something immigration neutral. He has his declaration that says he would not have [pled] at that point in time and that in and of itself is sufficient for the court to accept if the court wants to accept it.

"The Court: Certainly it is theoretically possible that Mr. Gonzalez could have gone to trial and avoided a conviction with limited immigration consequences, but isn't it equally true that he could have gone to trial and then [been] convicted and then be subject to the same adverse immigration consequences he now faces?

"[Defense counsel]:[6] Absolutely, Your Honor. But . . . he doesn't have to prove he would have gone to trial and won. What he needs to prove is that he would not have [pled] guilty at this point in time . . . . [The issue] is at that point in time whether or not he would have accepted the plea agreement and he says he would not have and I think it is a reasonable statement.

"The Court: Does he have any evidence that the People might have agreed to a disposition allowing him to avoid these adverse immigration consequences?

"[Defense counsel]: . . . I think . . . the court . . . is aware it is not outside the realm of the possibility in a drug case, especially when somebody has no record, that they

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6 The speaker here was apparently misidentified as the prosecutor in the reporter's transcript.

could settle it at times for a simple possession with additional . . . community service . . . a larger restitution fine, a larger time in custody because there [are] a lot of things that a defendant could give to the People in exchange for something that is immigration neutral. I think in my experience, and I assume in the court's experience, it is not unreasonable to be able to negotiate those types of dispositions.

"The Court: It depends on the evidence that the People have that establishes the strength of their positions."

3. *The trial court's ruling.*

After hearing oral argument, the trial court took the matter under submission and subsequently issued a written order denying the section 1016.5 motion. The trial court concluded Gonzalez had failed to demonstrate he was prejudiced as a result of the nonadvisement of immigration consequences in 1987.

The trial court reasoned as follows:

"Defendant asserts that, if he had been properly informed of immigration consequences, he would have exhausted options to negotiate an immigration neutral plea and continued on a path to trial. Beyond this self-serving assertion, defendant fails to even suggest how such a course of action was more reasonable than accepting the probation disposition he negotiated. The court may reject an assertion that is not supported by an explanation or other corroborating circumstances. [Citation.] Although Defendant alleges that had he been properly advised, he would not have entered this plea, there is nothing on this record to support this contention. This does not meet Defendant's burden of establishing prejudice. [Citation.]

"Nothing on this record demonstrates that it was reasonably probable that Defendant would have rejected this disposition. Nothing demonstrates how he might have been able to avoid conviction, or what specific defenses might have been available to him at trial, or how any evidence might have exonerated him, or what immigration neutral plea might have been available.

"At the time of Defendant's plea, even if properly advised, his choice was not between pleading guilty and being deported, or going to trial and avoiding deportation.

While a trial retained the theoretical possibility that Defendant might have avoided a conviction which would have rendered him deportable, excludable and ineligible for naturalization, it is equally true that a conviction after trial would have subjected him to these same consequences.

"The court may consider the probable outcome of any trial as well as the disparity between the minimal custodial and financial consequences of the plea agreement and the probable consequences of proceeding to trial viewed at the time of the offer. [Citation.] The probability of obtaining a more favorable outcome is relevant. [Citation.] 'A defendant convinced that he . . . is unlikely to avoid conviction thus might have few reservations about accepting a plea bargain that offers significant benefits over the probable consequences of proceeding to trial.' [Citation.] That is the situation demonstrated in this case.

"It is not reasonably probable that, even if properly advised, this Defendant, facing a potential state prison sentence of over six years as well as liability for thousands of dollars in statutory fines and fees – and without any demonstrable defenses – would have rejected a grant of probation for three years, 180 days in County jail and $150.00 in fines and fees."

4. *The Supreme Court's opinion in* Martinez.

In *People v. Martinez* (2013) 57 Cal.4th 555, our Supreme Court discussed how a trial court should adjudicate the prejudice prong of a section 1016.5 motion:

"Relief will be granted . . . only if the defendant establishes prejudice. [Citation.] As we explained in *Zamudio*, prejudice is shown if the defendant establishes it was reasonably probable he or she would not have pleaded guilty if properly advised. [Citation.] [¶] . . . We hold that because the question is *what the defendant would have done*, relief should be granted if the court, after considering evidence offered by the parties relevant to that question, determines the defendant would have chosen not to plead guilty or nolo contendere, even if the court also finds it not reasonably probable the defendant would thereby have obtained a more favorable outcome." (*People v. Martinez, supra*, 57 Cal.4th at p. 559.) "We hold *relief is available if the defendant establishes he*

or she would have rejected the existing bargain to accept or attempt to negotiate another." (*Id*. at p. 559, italics added.)

"That a defendant might reject a plea bargain because it would result in deportation, exclusion from admission to the United States, or denial of naturalization is beyond dispute. The Legislature so recognized when it enacted section 1016.5. [Citation.] This court has found that 'criminal convictions may have "dire consequences" under federal immigration law [citation] and that such consequences are "material matters" [citation] for noncitizen defendants faced with pleading decisions.' [Citation.] '[A] deported alien who cannot return "loses his job, his friends, his home, and maybe even his children, who must choose between their [parent] and their native country." ' [Citation.] Indeed, a defendant 'may view immigration consequences as the only ones that could affect his calculations regarding the advisability of pleading guilty to criminal charges' [citation], such as when the defendant has family residing legally in the United States." (*People v. Martinez*, *supra*, 57 Cal.4th at p. 563.)

"This is not to suggest the probability of obtaining a more favorable outcome is irrelevant. To the contrary, a defendant's assessment of the strength of the prosecution's case in relation to his or her own case is often a factor, and undoubtedly sometimes the determinative factor, in the decision to accept or reject a plea offer. A defendant convinced he or she is unlikely to avoid conviction thus might have few reservations about accepting a plea bargain that offers significant benefits over the probable consequences of proceeding to trial. Conversely, a defendant might decline to accept an offer if there is little to lose by rejecting it, particularly if acceptance would have significant adverse consequences. As we explained . . . a factor pertinent to the decision to accept or reject a plea may be the ' "disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, as viewed at the time of the offer. . . ." ' [Citation.] For that reason, '[i]n determining whether or not a defendant who has pled guilty would have insisted on proceeding to trial had he received competent advice, an appellate court . . . may consider the probable outcome of any trial, to the extent that may be discerned.' [Citation.] But because the test for prejudice considers

what the defendant would have done, that a more favorable result was not reasonably probable is only one factor for the trial court to consider when assessing the credibility of a defendant's claim that he or she would have rejected the plea bargain if properly advised. [¶] We recognize such a rule poses a threat to the finality of convictions obtained through the plea bargaining process, particularly in cases such as this, where a defendant seeks relief many years after his or her plea has been entered and the difficulty of proving guilt may have become insurmountable. Nevertheless, the Legislature, by providing for section 1016.5 relief, has expressed its willingness to accept the threat to the finality of judgments 'to promote fairness' to affected individuals. (§ 1016.5, subd. (d).)" (*People v. Martinez*, *supra*, 57 Cal.4th at pp. 564-565, fn. omitted, italics added.)

"[F]or purposes of a grant of section 1016.5 relief, the critical question is whether the defendant would have rejected the plea bargain, not what the outcome of that decision would have been. That the defendant would have done so is not established by evidence that criminal prosecutions are resolved by plea bargains or an immigration-neutral bargain was possible. Nonetheless, in determining the credibility of a defendant's claim, the court in its discretion may consider factors presented to it by the parties, such as the presence or absence of other plea offers, the seriousness of the charges in relation to the plea bargain, the defendant's criminal record, the defendant's priorities in plea bargaining, the defendant's aversion to immigration consequences, and whether the defendant had reason to believe that the charges would allow an immigration-neutral bargain that a court would accept." (*People v. Martinez*, *supra*, 57 Cal.4th at p. 568.)

5. *Discussion*.

Gonzalez argues the trial court erred because its decision "was predicated on three assumptions for which there was no evidentiary support: (1) if appellant went to trial he would be convicted; (2) appellant was faced with the choice of either accepting the plea agreement or going to trial; and (3) if convicted appellant faced a sentence of over 6 years in state prison. There were no facts to support these assumptions." We disagree.

The trial court relied on *People v. Martinez*, *supra*, 57 Cal.4th 555, and its explanation of how the prejudice prong of a section 1016.5 motion should be adjudicated. By properly following *Martinez*'s directions, it is clear the trial court did not find a lack of prejudice just because it believed Gonzalez would have been convicted at trial, or because it believed Gonzalez had only two choices (plead guilty or go to trial), neglecting to consider that he might try to negotiate an immigration-neutral disposition. And regardless of whether a maximum sentence was likely, it was nevertheless *possible* and the trial court was not wrong to say that Gonzalez was "facing a potential state prison sentence of over six years."

Gonzalez argues the trial court should not have even considered his likelihood of avoiding a conviction at trial because the record contains "no evidence of the strength of the prosecution's case" and Gonzalez's "inability to produce exculpatory evidence 27 years after his guilty plea, has no tendency in reason to prove or disprove the strength of the prosecution's original case." But Gonzalez has not provided even an informal explanation of why he might have been able to either beat the charges or negotiate an immigration-neutral disposition. Gonzalez provides no legal authority to the effect that even though he has the burden of proof on a section 1016.5 motion, he is excused from that burden on issues that may have been rendered opaque by the passage of time. And although Gonzalez may not have had a prior criminal record (an assertion the Attorney General does not dispute), we note that the drug trafficking offenses allegedly occurred on two different days: May 6 and May 8, 1987.

However, we need not decide these issues revolving around the strength of the criminal case Gonzalez faced because two other aspects of his prejudice showing are fundamentally flawed. Gonzalez argues: "It was unreasonable for the court to assert that appellant did not even suggest why rejecting the plea agreement in the hopes of an immigration-neutral disposition was more reasonable than accepting a plea agreement with mandatory deportation. Appellant currently has a green card, has been married for 25 years, has owned a home for 22 years, has two daughters and is gainfully employed.

Yet, he is now in deportation proceedings based upon this conviction." There are two flaws in this argument.

First, Gonzalez is trying to read his current life situation into the year 1987. But Gonzalez did not yet have a house and two children when he pled guilty in 1987. He was not even married yet in 1987. And as for his assertion that his life had already been established in the United States at the time he pled guilty, Gonzalez provided the trial court with absolutely no information describing his living situation at that time. Neither, apparently, did he even inform the trial court how old he had been when he came to this county in 1981. That is to say, however distressing the possibility of deportation might be for Gonzalez and his family today, the question presented by a section 1016.5 motion is: What would it have been reasonably probable for Gonzalez to do in 1987 if he had been properly advised of the immigration consequences? Gonzalez has made no showing that in 1987 his life situation made him particularly likely to do almost anything to avoid deportation.

Second, Gonzalez's choice in 1987 was not, as he argues, between accepting a plea agreement with *mandatory deportation* and attempting to negotiate an immigration-neutral disposition. In his section 1016.5 motion, Gonzalez asserted his "conviction subjects him to mandatory deportation and also makes him ineligible for any relief from deportation in United States Immigration Court. He is in removal proceedings, and because of this conviction will lose his lawful permanent residency and be ordered deported." But Gonzalez was not facing mandatory deportation in 1987 because the United States Attorney General had discretion to waive deportation.

The parties agree Gonzalez's 1987 conviction rendered him deportable under former 8 U.S.C. § 1251(a)(11),[7] which stated: "Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who . . . . at any time has been convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance . . . ." But at that time the United States

[7] That provision is now contained in 8 U.S.C. § 1227(a)(2)(B)(i).

Attorney General had the authority, under section 212(c) of the Immigration and Nationality Act of 1952, to grant discretionary relief from deportation. As the U.S. Supreme Court explained in *INS v. St. Cyr* (2001) 533 U.S. 289, 294-295 [121 S.Ct. 2271] (*St. Cyr*): "Section 212 of the Immigration and Nationality Act of 1952, which replaced and roughly paralleled § 3 of the 1917 Act, excluded from the United States several classes of aliens, including those convicted of offenses involving moral turpitude or the illicit traffic in narcotics. [Citation.] As with the prior law, *this section was subject to a proviso granting the Attorney General broad discretion to admit excludable aliens*. [Citation.] . . . . [¶] . . . [¶] Like § 3 of the 1917 Act, § 212(c) was literally applicable only to exclusion proceedings, but it too has been interpreted by the Board of Immigration Appeals (BIA) to authorize any permanent resident alien with 'a lawful unrelinquished domicile of seven consecutive years' to apply for a discretionary waiver from deportation. [Citation.] If relief is granted, the deportation proceeding is terminated and the alien remains a permanent resident."

St. Cyr noted, moreover, that applications for section 212(c) relief were liberally granted prior to 1995. The court said: "[T]he class of aliens whose continued residence in this country has depended on their eligibility for § 212(c) relief is extremely large, and not surprisingly, a substantial percentage of their applications for § 212(c) relief have been granted. Consequently, in the period between 1989 and 1995 alone, § 212(c) relief was granted to over 10,000 aliens." (*St. Cyr*, *supra*, 533 U.S. at pp. 295-296, fns. omitted.) According to *St. Cyr*, "[p]rior to [1996], aliens like St. Cyr had a significant likelihood of receiving § 212(c) relief." (*Id*. at p. 325.)[8]

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[8] Gonzalez points to the fact the immigration laws have substantially changed since 1987 and thus he urges that he currently is subject to certain deportation. In fact, *St. Cyr* held that Congress's 1996 amendments to section 212(c) could not be applied retroactively because they "impose[ ] an impermissible retroactive effect on aliens who, in reliance on the possibility of § 212(c) relief, pleaded guilty to aggravated felonies." (*St. Cyr*, *supra*, 533 U.S. at p. 315.) In any event, whatever the current state of the law, it is not relevant to our analysis because as we have said, the relevant question under section 1016.5 is what Gonzalez would have understood the immigration consequences of his plea to have been *in 1987*.

In *People v. Borja* (2002) 95 Cal.App.4th 481, which involved a 1994 guilty plea, the court of appeal noted, citing *St. Cyr*: "At the time Borja pleaded guilty, the Attorney General had discretion to grant waivers of deportation and these waivers were often granted. [Citation.] In 1996 the immigration laws were changed, inter alia, eliminating the waiver provision . . . ." (*Id*. at p. 486.) However, "While [Borja's] appeal was pending, the United States Supreme Court held that the elimination of the Attorney General's discretion to grant waivers of deportation was not to be applied retroactively to persons who pleaded guilty before the effective date of the changes in the immigration law. [Citation.] As a practical matter, Borja today is in the same position as he was when he pleaded guilty in 1994." (*Id*. at p. 486, fn. 3.)

The same is true for Gonzalez. Although he was "deportable" in 1987 as a result of his drug trafficking conviction, he was not facing "mandatory deportation" and the subsequent changes to federal immigration law have not changed that difference.[9]

We conclude Gonzalez failed to satisfy the prejudice prong of his section 1016.5 motion because he did not show "it was reasonably probable he . . . would not have pleaded guilty if properly advised." (*People v. Martinez, supra*, 57 Cal.4th at p. 559.) Gonzalez failed to show his life situation in 1987 was such that he had particularly strong reasons for seeking to avoid deportation. In addition, it is not likely Gonzalez would have negotiated a different plea agreement because he was not facing mandatory deportation as a result of this conviction. Thus, we find the trial court did not abuse its discretion by denying Gonzalez's section 1016.5 motion.

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[9] To accommodate the *St. Cyr* decision, federal administrative procedures have been established to provide relief for defendants who entered plea agreements before the new statutory provisions took effect. (See, e.g., 8 C.F.R. § 1003.44 [Special motion to seek section 212(c) relief for aliens who pleaded guilty or nolo contendere to certain crimes before April 1, 1997].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.